

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MARIO MICHAEL MAYORGA,

Petitioner,

v.

CHRISTIAN PFEIFFER,

Respondent.

No. 2:22-cv-1940 WBS KJN P

ORDER

Petitioner is a state prisoner, proceeding pro se, with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. On April 3, 2023, petitioner was ordered to show cause why respondent's motion to dismiss should not be granted. On April 24, 2023, petitioner filed a response, as well as a motion to stay and abey his federal habeas petition pursuant to Rhines v. Weber, 544 U.S. 269 (1995), in order to exhaust state court remedies on claim five. (ECF No. 16.) Respondent is directed to file a response to the motion for stay within 30 days.

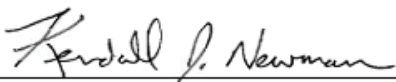
Due to the overwhelming demands on the court's docket, petitioner's motion may not be adjudicated immediately. However, petitioner is not required to await resolution of the pending motion before returning to state court to properly exhaust his state court remedies. In the event that petitioner exhausts any claims in the California Supreme Court prior to this court's resolution of the pending motion, petitioner is advised to file a notice of exhaustion in this court.

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Accordingly, IT IS HEREBY ORDERED that:

1. The order to show cause (ECF No. 15) is discharged;
2. Respondent is directed to file an opposition or a notice of non-opposition to petitioner's stay and abeyance motion within 30 days from the date of this order; and,
3. Petitioner's reply, if any, is due fourteen days thereafter; and
4. If petitioner exhausts any claims in the California Supreme Court prior to this court's resolution of the pending motion, petitioner shall file a notice of exhaustion in this court.

Dated: May 2, 2023


KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE

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